

*

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Revision of the Commissions Rules to Ensure)	CC Docket No. 94-102
Compatibility with Enhanced 911 Emergency)	
Calling Systems)	
)	

To: Chief, Wireless Telecommunications Bureau

COMMENTS OF WESTERN WIRELESS CORPORATION

Western Wireless Corporation hereby files comments in response to the Wireless Telecommunications Bureau's ("Bureau") Public Notice of April 5, 2001, seeking comment on a Request for Clarification or Declaratory Ruling filed by the City of Richardson, Texas ("Richardson") in the above-referenced proceeding.¹ Richardson is requesting clarification or a declaratory ruling concerning the process by which a Public Safety Answering Point ("PSAP") requests Phase II enhanced 911 ("E911") service from wireless carriers. Essentially, Richardson asserts that a PSAP makes a "valid request" for Phase II E911 service by merely asserting to the carrier that all equipment upgrades will be finalized prior to delivery of service by the carrier. The Bureau should affirm the Commission's long-standing policy that a PSAP must actually have the capability of receiving and utilizing data elements associated with those services as a

¹ City of Richardson, Texas, Petition for Clarification and/or Declaratory Ruling, CC Docket No. 94-102 (Apr. 5, 2001); Public Notice, Wireless Telecommunications Bureau Seeks Comment on Request for Clarification or Declaratory Ruling Concerning Public Safety Answering Point Requests for Phase II Enhanced 911, CC Docket 94-102, DA 01-886 (rel. April 5, 2001) ("Public Notice").

precondition to a carrier's E911 obligations. Furthermore, Richardson's petition is procedurally unsound. Accordingly, Western Wireless urges the Bureau to deny the Petition.

DISCUSSION

I. THE COMMISSION'S LONG-STANDING POLICY AND RULES PROVIDE THAT A CARRIER'S OBLIGATIONS ARE TRIGGERED ONLY IF A PSAP IS CAPABLE OF RECEIVING AND UTILIZING E911 DATA ELEMENTS

On March 20, 2000, Richardson made a request to VoiceStream Wireless ("VoiceStream") to implement its Phase II system. VoiceStream responded to the Petition by informing Richardson that its request was not valid for purposes of triggering its Phase II regulatory obligations because Richardson's equipment was not yet capable of receiving Phase II data. In its Petition, Richardson argues that VoiceStream's denial of its request is improper based on its assurances to VoiceStream that its equipment upgrades would be finalized prior to the carrier's delivery of Phase II services.² Richardson believes that its statement of future readiness to VoiceStream is sufficient to trigger the latter's obligation to provide Phase II services.

Notwithstanding Richardson's expectation, the Commission's rules clearly provide that a carrier is not obligated to provide E911 service until the PSAP capability and cost recovery mechanisms are satisfied. As Section 20.18(j) states:

The[se] requirements ... shall be applicable only if the administrator of the designated Public Safety Answering Point has requested the services required under those paragraphs and is capable of receiving and utilizing the data elements associated with the service, and a mechanism for recovering the Public Safety Answering Point's costs of the enhanced 911 is in place.³

² See Petition at 1; Exhibit B (Letter from James A. Nixon, VoiceStream Wireless Corporation to Joe Hanna, Richardson Police Department, dated April 18, 2000).

³ Id. 47 C.F.R. § 20.18(j) (emphasis supplied).

It is apparent that Richardson did not have the necessary capability at the time of the request. Further, Richardson's interpretation flatly contravenes Section 20.18(j) of the rules which provides that a carrier's obligations under Sections 20.18(e) through (h) are not triggered until the PSAP capability and cost recovery prerequisites are satisfied.

Moreover, Richardson's request contravenes the underlying policies of the Commission's rules. Richardson argues that the Commission's Second Memorandum Opinion and Order did not specifically address whether a PSAP request is valid when a PSAP represents to a wireless carrier that it will have its equipment upgrades finalized by the time Phase II service is delivered to the PSAP.⁴ However, the Second Memorandum Opinion and Order reaffirmed the intent of the language set forth in Section 20.18(j): "[T]he carrier's E911 service obligation is triggered when the carrier receives a valid request from a PSAP that is capable of receiving and utilizing the data elements associated with the service."⁵ Richardson's interpretation of the rule would place an unnecessary burden on carriers by requiring them to offer services prior to the time the PSAP "is capable of receiving and utilizing" Phase II data.

Richardson argues that permitting a carrier to wait for the PSAP to complete the equipment upgrades would "only delay the initiation of Phase II service and for no good reason."⁶ In support of this argument, Richardson cites to the Commission's generalized statement in the Third Report and Order that E911 services should be deployed in an expeditious manner and without undue delay.⁷ Richardson fails to mention, however, that the Commission in

⁴ Petition at 4 (quoting 14 FCC Rcd. at 20853).

⁵ Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, Second Memorandum Opinion and Order, 14 F.C.C.R. 20850, 20877 (1999); Id. at 20878; Id. at 20909.

⁶ Petition at 5; "Second Memorandum Opinion and Order" (emphasis added).

⁷ Petition at 5; Third Report and Order, citing 14 FCC Rcd 17388, 17392 (1999) ("Third Report and Order").

its orders explicitly drew a balance between (1) subscribers' interest of rapid deployment and (2) the need to avoid unnecessarily burdening carriers and to encourage PSAPs to upgrade their own facilities. As the Commission explained:

Carriers should not be forced to make investments in their networks to provide E911 services that cannot be used by the PSAP. Apart from the significant costs involved, because location technologies are evolving and improving ... the PSAP and the carrier benefit from a requirement that is not triggered until the actual time that the PSAP can take advantage of the E911 service.⁸

The Bureau must follow the express language of the Commission's rules and orders and deny the Petition.

II. RICHARDSON'S PETITION IS PROCEDURALLY UNSOUND

Section 1.2 of the Commission's rules provides: "The Commission may, in accordance with section 5(d) of the Administrative Procedures Act, on motion or on its own motion issue a declaratory ruling terminating a controversy or removing uncertainty."⁹ It is inappropriate to grant a declaratory ruling where, as here, an interested person disputes the substance of an otherwise unambiguous Commission rule or decision.¹⁰ Richardson's attempt to characterize its dissatisfaction with the Commission's rules as a declaratory ruling proceeding should be dismissed outright. As stated above, the Commission has set out a clear policy in its rules that requires PSAPs to be capable of receiving and utilizing the data elements associated with the service as a precondition of carriers' E911 obligations. The rule is not ambiguous and

⁸ Second Memorandum Opinion and Order at ¶ 69; see also Third Report and Order, at ¶ 53 (affirming this policy for Phase II deployment purposes) (emphasis added).

⁹ 47 C.F.R. § 1.2.

¹⁰ See Public Service Commission of Maryland, Memorandum Opinion and Order, 4 FCC Rcd. 4000, ¶ 30 (1989) ("[A]n interested person who believes an unambiguous Commission is

Richardson has not cited any language in the rules to the contrary. If Richardson is dissatisfied with the Commission's rule, it should have filed a petition for reconsideration in a timely manner or petitioned the Commission's to initiate a rulemaking proceeding.¹¹

CONCLUSION

The Bureau should summarily deny the Petition for the reasons discussed herein.

Respectfully submitted,

WESTERN WIRELESS CORPORATION

By: /Gene A. DeJordy/
Gene A. DeJordy
Vice President of Regulatory Affairs
Western Wireless
3650 131st Ave., SE, Ste. 400
Bellevue, WA 98006
(425) 586-8700

April 23, 2001

incorrect ... should filed a timely petition for reconsideration with the appropriate Court of Appeals").

¹¹ To the extent that the Commission views Richardson's petition for clarification as a petition for reconsideration, it should be dismissed as untimely. See Reuters Ltd. v. FCC, 781 F.2d 946, 950 (D.C. Cir. 1986).